

RESTRICTIVE COVENANT

[NAME OF PROPERTY OWNER, AND NAME OF PROPERTY]

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [NAME OF PROPERTY OWNER], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

An independent remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following document[s]: [INSERT THE DATE AND TITLE FOR EACH DOCUMENT¹ LISTED INCLUDING THE NAME OF THE PERSON OR BUSINESS WHO PREPARED THE DOCUMENT(S)]. [THIS or THESE] document[s] [IS or ARE] on file at Ecology's [SWRO, NWRO, ERO, or CRO].

++++++*Select the appropriate scenario for the property*++++++

SCENARIO 1:

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of [SPECIFICALLY LIST SUBSTANCE(S)] which exceed the Model Toxics Control Act Method [LIST APPLICABLE METHOD A OR B] Residential Cleanup Level(s) for [SOIL, GROUNDWATER, ETC.] established under WAC 173-340-____.

¹ The term 'document' means reports prepared regarding the remedial action as well as Ecology's NFA letter.

++++and/or++++

SCENARIO 2:

This Restrictive Covenant is required because a conditional point of compliance has been established for [SOIL, GROUNDWATER, ETC.].

SCENARIO 3:

If the Remedial Action does not fit within Scenarios 1 and/or 2 and you believe that the property still needs a Restrictive Covenant, contact the AG's office.

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The undersigned, [NAME OF PROPERTY OWNER], is the fee owner of real property (hereafter "Property") in the County of [NAME OF COUNTY], State of Washington, that is subject to this Restrictive Covenant. The Property is legally described [AS FOLLOWS: *(insert legal description language)*] -or- [IN ATTACHMENT A OF THIS RESTRICTIVE COVENANT AND MADE A PART HEREOF BY REFERENCE *(attach document containing legal description)*].

[NAME OF PROPERTY OWNER] makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. *(This Section must describe with particularity the restrictions to be placed on the property.)*

1. *If the property was remediated to Industrial Cleanup Standards use the following sentence:* "The Property shall be used only for traditional industrial uses, as described in RCW 70.105D.020(23) and defined in and allowed under the [CITY -or- COUNTY] of [_____] 's] zoning regulations codified in the [OFFICIAL NAME OF ZONING REGULATION] as of the date of this Restrictive Covenant."

2. *If the groundwater contains hazardous substances above Method A or B Residential Cleanup Levels use the following sentence:* "No groundwater may be taken for [LIST THE PROHIBITED USES, E.G., DOMESTIC, AGRICULTURAL, OR ANY USE] from the Property."

3. *If contaminated soil remains that is above Method A or B Residential Cleanup Levels describe prohibited activities.*

a. *For contaminated soil under a structure use the following sentence:* "A portion of the Property contains [SPECIFICALLY LIST SUBSTANCE(S)] contaminated soil located [SPECIFICALLY DESCRIBE WHERE THE SOIL IS LOCATED, I.E., UNDER THE SOUTHEAST PORTION OF BUILDING 10]. The Owner shall not alter, modify, or remove the existing structure[s] in any manner that may result in the release or exposure to the environment of that

contaminated soil or create a new exposure pathway without prior written approval from Ecology."

b. Example language for contaminated soil under a cap: "Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork."

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

[NAME OF PROPERTY OWNER]

[DATE SIGNED]

[NOTE: The Property Owner must have this Restrictive Covenant notarized.]